

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application by BellSouth Corp. et al.) CC Docket No. 97-208
for Provision of In-Region,)
InterLATA Services in South Carolina)

OPPOSITION OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

THE COMPETITIVE
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SUMMARY

CompTel opposes BellSouth's application for three reasons.

First, BellSouth is not eligible to apply under Track B of Section 271. BellSouth claims that no "facilities-based" carrier is taking reasonable steps to enter the South Carolina market, but it ignores all competing providers that are attempting to use BellSouth unbundled network elements ("UNEs") as their own facilities to offer a competitive local exchange service. In the *Ameritech Michigan* proceeding, the Commission concluded that such carriers are "facilities-based" carriers under Section 271. Thus, by focusing only on carriers deploying "self-provided facilities," BellSouth ignores qualifying requests by numerous potential competitors that are seeking to use UNEs to provide facilities-based local exchange service.

Not only has BellSouth completely ignored relevant requests, its claim that potential competitors are unreasonably delaying entry into the South Carolina local exchange market is ludicrous. Potential competing providers are being shut out of the South Carolina market -- particularly the residential and small business markets -- because BellSouth refuses to provide access to UNEs in a way that enables competitors to serve a broad scale subscriber base in South Carolina. By refusing to provide access to UNEs in their preexisting combinations and instead imposing an unnecessary cost and network disruption upon UNE purchases, BellSouth has erected a substantial barrier to entry in the residential and small business market, where it will not be economically feasible to construct duplicative network facilities in the near future. Whereas 85 percent of the residential market could attract competitive providers if BellSouth permitted CLECs to combine UNEs efficiently, at most 8 to 29 percent of the market is potentially addressable as a result of BellSouth's obstructionist position. As a

result, BellSouth itself -- not its competitors -- has unreasonably delayed competitive entry that would satisfy Track A. Because it has created the conditions that preclude fulfillment of Track A, it cannot proceed under Track B on the theory that competitors are not entering the market.

Second, BellSouth does not satisfy the competitive checklist because it is not providing nondiscriminatory access to UNEs. Having chosen not to provide UNEs in logical combinations, BellSouth is obligated to provide CLECs with nondiscriminatory access to the network so they may combine the elements themselves. However, BellSouth forces CLECs either to accept those network elements that can be delivered to a collocation cage (and incur the substantial costs of physically separating the elements and establishing collocation arrangements in each BellSouth end office) or rely on BellSouth's undefined pledge to negotiate a "glue charge" for BellSouth to recombine the elements. BellSouth does not offer CLECs access to the network where the elements currently are combined, nor has it implemented automated systems to separate (and combine) network elements. Without access that is at parity with BellSouth's own ability to combine network elements, the entry barrier erected by BellSouth's forced separation policy will continue to foreclose facilities-based entry in the residential local exchange market.

Third, although BellSouth has agreed to offer unbundled local switching, it has not demonstrated it can bill CLECs for the usage component of that network element. This failure has two consequences impeding local exchange competition: (1) BellSouth cannot accurately bill the CLEC for the UNE and (2) the CLEC does not have the information *it* needs to offer and bill for exchange access or other usage-based services using the UNE.

Accordingly, BellSouth has not shown that unbundled local switching (or other usage-based UNEs) are legally or practically available.

For these reasons, the Commission should deny BellSouth's application. BellSouth must first take the steps necessary to open the local exchange market in South Carolina to competition. Evidence that the local exchange market is open to all competitors and all three methods of entry is critical because Congress established Section 271 as the sole incentive for the BOCs to open their local exchange networks to competition. As long as BellSouth has erected barriers precluding potential competitors from serving the broad scale business and residential markets using elements of BellSouth's network, the Section 271 incentive should remain in place.

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(Fla. PSC Hearing Transcript, September 5, 1997)

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The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits the following opposition to the application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively, "BellSouth") for authority to provide in-region, interLATA services in South Carolina.

CompTel is a national industry association representing competitive providers of telecommunications services. Its over 200 members offer a wide variety of telecommunications services in markets which have been opened to competition. CompTel and its members are committed to the goal of expanding consumer choice in the local exchange and exchange access markets, where competitive alternatives do not exist today. CompTel was intimately involved in the legislative debates culminating in the Act and has participated extensively in implementation proceedings before the FCC and state PUCs.

CompTel strongly supports this Commission's efforts to introduce open and fair competition in local exchange and exchange access services, so that consumers can enjoy the benefits of competition in *all* telecommunications markets. As explained below, BellSouth has erected barriers to entry in local exchange markets using unbundled network elements ("UNEs"). A lack of competition in the residential and small business markets is the direct

result from (and obvious intended effect of) these barriers. Therefore, unless and until BellSouth modifies its position to make such entry feasible, its application must be denied.

I. INTRODUCTION

BellSouth does not meet Section 271's standards for interLATA authorization, and it makes surprisingly little effort to conceal that fact. CompTel agrees that BellSouth has failed to make a *prima facie* showing on several key issues, including the pricing, unbundling and OSS standards articulated in the *Ameritech Michigan* order.¹ The application could be dismissed for this reason alone.² However, separate and apart from this failure, the record demonstrates that BellSouth has in fact done everything it can to deny entry through the very method that promises immediate and broad scale local competition -- use of BellSouth's ubiquitous local network to create new competing telecommunications services.

In adopting the telecommunications provisions of the 1996 Act,³ Congress had one simple, yet ambitious, goal: to end the final monopoly in the telecommunications industry, the local exchange. Congress knew that it could not achieve this goal simply by declaring local markets "open" to competitors. Therefore, it did not stop with eliminating *de jure* barriers to entry, but took action to require ILECs to open their networks and share the

¹ BellSouth Brief at 20-21; *see Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, FCC 97-298 (rel. August 19, 1997) (hereinafter *Ameritech Michigan Order*).

² *See* Motion of AT&T Corp. and LCI International Telecom Corp. to Dismiss BellSouth's 271 Application for South Carolina, Docket 97-208 (filed October 1, 1997).

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 47 U.S.C. §§ 151 et seq.

economies they developed through a century of government-protected monopoly provision of service.⁴ Due to the exorbitant cost of constructing a duplicate local exchange network, local exchange competition must proceed, at least for the near term, through use of the incumbent's facilities, in part or in whole. *See Ameritech Michigan Order*, ¶ 12. Just as importantly, however, Congress recognized that for competition to flourish, entrants must have the flexibility to choose only those pieces of the ILEC network they need, and to use them as needed. *Id.* Therefore, the 1996 Act requires ILECs, including the BOCs, to open their networks for all methods of entry, including methods that do not require an entrant (at least as an initial matter) to duplicate any of the ILEC's facilities. *Id.* at ¶ 13.

Of particular importance to CompTel and its members is that ILEC network facilities be made available in logical and functional arrangements chosen by the requesting carrier. New entrants should be able to receive on an unbundled basis such pieces of the network as are necessary -- and at levels of disaggregation dictated by the entrant's needs -- in a manner that they can quickly and easily combine with their own facilities or with other pieces of the ILEC's network to create a viable competing telecommunications service.

A CLEC's ability to use UNEs and their logical combinations in this way is integral to achieving Congress' objective of promoting competition in the local telecommunications market. *Id.* at ¶ 332. It will enable competing carriers to function as LECs in all respects by configuring their own retail products, managing their networks, and providing a full range of retail and carrier services (including originating and terminating access services). This form of entry is particularly critical to the development of competition for residential and

⁴ *See, e.g.*, 47 U.S.C. § 251(c).

small business customers, where construction of duplicative network facilities is practically and economically infeasible. Indeed, for most CompTel members, the viability of *any* initial entry into the local exchange market will depend upon the ease with which they can obtain and combine UNEs purchased from an ILEC.

The Eighth Circuit's decision in *Iowa Utilities Board*⁵ threatens the achievement of Congress' objective in promoting local competition. The Commission must now re-examine how it will ensure that CLECs obtain access to this integral component of local competition. CompTel believes that the Commission can and must define logically related network facilities and functionalities as both a single network element and as separable network elements. In addition, the Commission must re-examine the adequacy of the access an ILEC provides to its network elements, to ensure that CLECs can combine them as quickly and efficiently as the ILEC does to provide its own local exchange services.

As shown below, BellSouth's refusal to acknowledge competition through UNEs as a valid form of facilities-based competition permeates its application and has created a substantial barrier to entry in the residential and small business markets. Not only does BellSouth completely ignore unbundled network elements in its Track B analysis, but it also fails to demonstrate that it is providing CLECs the same level of access it provides to its own operations for the purposes of combining network elements. Therefore, CompTel opposes BellSouth's application.

⁵ *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997).

II. BELLSOUTH IS INELIGIBLE TO APPLY UNDER TRACK B

The 1996 Act provides two ways for a Bell Operating Company ("BOC") to establish the predicate for in-region, interLATA authorization. The primary method is through satisfaction of Section 271(c)(1)(A), or "Track A", of the Act. *See Application by SBC Communications, Inc., Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services in Oklahoma*, Memorandum Opinion and Order, FCC 97-228, ¶¶ 41-43 (rel. June 26, 1997) (hereinafter *SBC Oklahoma Order*). Under Track A, a BOC must demonstrate that "it is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers," and that the services are being offered exclusively or predominantly over their own facilities.⁶ A necessary consequence of Track A's requirement is that there will be a period during which a BOC is precluded from applying under Track B while a requesting carrier is in the process of becoming an operational competitor. *SBC Oklahoma Order* at ¶ 41. In other words, once it has received a request for access and interconnection, a BOC must show that it is facing actual competition for both residential and business services from an unaffiliated, facilities based provider.

Responding to a BOC's theoretical concerns that competing providers may not seek to enter their markets, Congress created a narrow exception to the actual competition standard, known as "Track B." Track B is available *only* if "no such provider [*i.e.*, no potential

⁶ 47 U.S.C. § 271(c)(1)(A).

facilities-based provider] has requested the access and interconnection described in [section 271(c)(1)(A)]."⁷ As the plain language of the statute and the Commission's own interpretation dictate, it is the presence of a *request* for access and interconnection that makes the substantive standard of Track A applicable -- and that precludes the application of Track B. *SBC Oklahoma Order* at ¶ 27. A "qualifying request" disabling Track B "is a request for negotiation to obtain access and interconnection that, if implemented, would satisfy the requirements of section 271(c)(1)(A)." *Id.* Once such a qualifying request has been made, the BOC must proceed to implement the request and is foreclosed from invoking Track B unless the requesting carrier (1) refuses to negotiate in good faith or (2) violates the terms of an interconnection agreement by failing to comply, within a reasonable period of time, with the agreement's implementation schedule.⁸

BellSouth claims that it may proceed under Track B because no "facilities-based carrier" has taken reasonable steps toward providing residential service in South Carolina.⁹ It claims that only three providers have placed "self-provided facilities" in the state.¹⁰ None of these entities, BellSouth claims, are moving toward the provision of residential local exchange service.¹¹

⁷ 47 U.S.C. § 271(c)(1)(B).

⁸ 47 U.S.C. § 271(c)(1)(B).

⁹ BellSouth Brief at 8.

¹⁰ *Id.* at 13.

¹¹ *Id.* at 13-15.

At the outset, CompTel notes that there can be little debate that BellSouth has received a number of qualifying requests for access and interconnection pursuant to Section 271(c)(1)(A). BellSouth admits that it has signed interconnection agreements with 26 entities that, if fulfilled, would result in facilities-based local exchange services.¹² Obviously these carriers each initiated the agreement by making a request for access and interconnection from BellSouth. Accordingly, the Commission should conclude that BellSouth has received qualifying requests for access and interconnection described in Section 271(c)(1)(A).

BellSouth's further claims that no requesting carrier is proceeding toward the provision of facilities-based service is wrong because (1) it improperly ignores most competing providers seeking to provide facilities-based service and (2) entry by competing providers in the residential market has been impeded by BellSouth's own actions, not by delay or bad faith by CLECs.

A. BellSouth Ignores Efforts to Provide Facilities-Based Service Through the Use of UNEs

It being indisputable that BellSouth has received requests for access and interconnection, BellSouth appears to be claiming that these competing providers have not negotiated in good faith or have failed to comply with their interconnection agreements. The veracity of such an assertion is fact-specific, and CompTel expects that the three entities singled out in the application will provide the Commission with the full picture of their efforts to enter the local exchange market in South Carolina. BellSouth's focus on only these

¹² *Id.* at 13.

three entities, however, demonstrates a fundamental misunderstanding of the facilities-based requirement as defined by the Commission.

In the *Ameritech Michigan* proceeding, the Commission found that UNEs purchased from a BOC are a competing provider's "own telephone exchange service facilities" for purposes of Section 271(c)(1)(A). *Ameritech Michigan Order* at ¶¶ 94-99. BellSouth's focus solely on whether competing providers have deployed "self-provided facilities" thus directly contradicts the Commission's interpretation of Section 271. Potential competitors that have requested the use of UNEs, including those that intend to use UNEs exclusively, are facilities-based providers for purposes of determining whether Track A applies.

Therefore, the only way BellSouth could proceed under Track B in light of these additional requests would be if BellSouth could show that each competing provider had negotiated in bad faith or had failed to comply with the implementation schedule contained in its interconnection agreement. But BellSouth has not alleged either event. It has not produced any evidence of bad faith negotiation by such requesting carriers, and there is no basis upon which the Commission could conclude that requesting carriers are not complying with their interconnection agreements. Indeed, it seems highly implausible that 26 carriers would have requested and negotiated an interconnection agreement with BellSouth, but that none of them are pursuing implementation of that interconnection through UNEs. Rather, as explained in the next section, any delay in entering the local exchange market in South Carolina is much more likely the result of BellSouth's obstruction of entry through the use of UNEs.

Similarly, the South Carolina Public Service Commission's ("SCPSC") "certification" that no competing providers have taken reasonable steps to enter the market appears to be based on the same erroneous interpretation of the "facilities-based" standard. The SCPSC did not define its use of the "facilities-based" concept, and its order included no discussion of UNE-based efforts to provide service. The "certification" therefore should not be read to apply to all competing providers that have requested access and interconnection from BellSouth.

A state PSC's role is limited to consulting with the FCC to verify compliance with the competitive checklist. Its conclusions are not dispositive, particularly those based on erroneous legal interpretations. As the Commission found in the *SBC Oklahoma Order*:

[W]e find that the Oklahoma Commission's determination on [Section 271 compliance issues] is not dispositive. Section 271 requires us to consult with the Oklahoma Commission "in order to verify the compliance of [SBC] with the requirements of [Section 271(c)]" before we make any determination on SBC's application At the same time, as the expert agency charged with implementing Section 271, we are required to make an independent determination of the meaning of statutory terms in Section 271.

SBC Oklahoma Order, ¶ 15. In this instance, the Commission should give little weight to the SCPSC's determination.

B. Potential Competitors Seeking to Use UNEs to Provide Facilities-Based Service Have Been Precluded from Doing so by BellSouth's Refusal to Make UNEs Practically Available

Contrary to its assertion that it has done everything it can to open its markets to competition, BellSouth in fact has erected a barrier to that entry through its refusal to make combinations of UNEs feasible. BellSouth's position is that it will not provide combinations

of UNEs to CLECs.¹³ Moreover, it has not designed its OSS systems to enable CLECs to order logical combinations of UNEs.¹⁴ Instead, network facilities and functionalities that are logically related will be separated in all instances by BellSouth, even if a CLEC's entire order could be satisfied through use of the elements that are currently combined. In other words, BellSouth will *require* the separation of network elements, even where there is no logical or technical reason to do so.

While a CLEC is then "free" to combine the elements at its discretion, BellSouth offers CLEC only two options to do so: (1) the UNEs can be "physically delivered" to a CLEC's collocation cage, if possible, or (2) the CLEC can negotiate with BellSouth, but BellSouth will not commit to combining the elements requested.¹⁵

As explained in the attached affidavit of Joseph Gillan, BellSouth's demand for mandatory separation creates a cost-barrier that effectively forecloses facilities-based entry to the residential market. Affidavit of Joseph Gillan on Behalf of the Competitive Telecommunications Association, ¶ 6 (hereinafter "Gillan Aff.") (attached as Exhibit 1). Mandatory separation of logically combined network facilities and functionalities has five principal effects: (a) it creates an *avoidable* service outage when a customer changes local service providers, (b) it imposes additional costs to separate the network elements, (c) it

¹³ BellSouth Brief at 39; Statement of Generally Available Terms and Conditions for Interconnection, Unbundling and Resale Provided by BellSouth Telecommunications, Inc. in the State of South Carolina, § II.F ("*CLEC-Combined Network Elements*") (hereinafter *South Carolina SGAT*).

¹⁴ BellSouth Brief at 28-29.

¹⁵ Varner Aff. ¶ 74; *See South Carolina SGAT*, § II.F.1 (Additional services to combine network elements "are available as negotiated").

causes the CLEC to incur additional costs to combine the network elements back to their original form, (d) it greatly increases the risk of error due to the interposition of unnecessary manual conversion processes, and (e) it imposes an additional delay in transferring customers to new local service providers. Gillan Aff. ¶ 9.

The non-cost effects, while unquantifiable, are significant. But for BellSouth's insistence on physical separation of logically related elements, the transfer of a typical residential customer could be accomplished through automated processes similar to an interexchange carrier PIC change. Instead, the customer must endure a disconnection of service while the physical separation is accomplished, creating a disincentive for consumers to change local service providers. Gillan Aff. ¶ 10.¹⁶ In addition, the manual process to separate network features and functionalities increases the time between receipt of a service order and its fulfillment.

BellSouth's mandatory separation position also raises the cost of obtaining and combining UNEs to create a competing telecommunications service and reduces the size of the market potentially addressable by competitors. Gillan Aff. ¶¶ 11-23.¹⁷ Over \$108.00 of the \$109.20 cost per line imposed by BellSouth is an *unnecessary* cost that could be avoided if BellSouth permitted CLECs to combine UNEs efficiently. *Id.* ¶¶ 11-15. Without

¹⁶ This also creates an unnecessary risk to public health and safety because customers are cut off from police, fire, and emergency services during this period. *Id.*

¹⁷ For purposes of this analysis, a customer is considered "potentially addressable" if its monthly local revenues exceed the cost of obtaining from BellSouth the unbundled network elements necessary to provide local service. *Id.* ¶ 16 & n.9. Advances in technology or alternative means of reaching a customer may make other portions of the market potentially addressable.

this unnecessary cost, approximately 85 percent of the residential market in South Carolina would be potentially addressable through facilities-based service. *Id.* ¶ 16. Because BellSouth imposes an additional cost to separate logically related network facilities and functionalities, the size of the potentially addressable market is severely restricted. *Id.*

The extent of this reduction depends upon the length of time over which new entrants can amortize the unnecessary costs BellSouth imposes. A competitive market brings with it a less stable customer base, as customers frequently move from one provider to another in response to more attractive offers. Thus, if high customer turnover forces new entrants to amortize these costs over a brief period, such as four months, only 8 percent of the residential market would be potentially addressable using BellSouth UNEs. *Id.* ¶¶ 20-21. Even an amortization period of one year -- a risky proposition in a competitive environment - - would make less than 29% of the residential market potentially addressable using BellSouth UNEs. *Id.* These numbers graphically illustrate the preclusive effect of BellSouth's refusal to permit CLECs to combine UNEs efficiently.

Significantly, the above analysis considers *only* the economic effects of the costs BellSouth imposes to separate network elements. The analysis thus underestimates the preclusive effect of BellSouth's position because it ignores costs CLECs will incur to return the elements to their original configuration. Whether the CLEC performs this combination itself or pays BellSouth a to-be-negotiated "glue charge" to do it, these additional costs will make it even more difficult for CLECs to serve residential customers using UNEs as provided by BellSouth.

As a result, it is not surprising that CLECs have not yet begun providing service to residential customers in South Carolina. This fact, however, is not evidence of bad faith on the part of CLEC, but rather is entirely attributable to BellSouth's refusal to make such competition possible. BellSouth created the conditions which are precluding its satisfaction of Track A's actual competition test.¹⁸ As long as these conditions remain, Track B cannot be available to BellSouth.

III. BELLSOUTH IS NOT PROVIDING ACCESS TO UNBUNDLED NETWORK ELEMENTS IN ACCORDANCE WITH THE COMPETITIVE CHECKLIST

BellSouth's application also fails to meet the Act's requirements because it does not provide nondiscriminatory access to UNEs so that CLECs may combine the elements themselves.¹⁹ The 1996 Act requires ILECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point" and to do so "in a manner that allows requesting carriers to combine such elements in order to provide [any] telecommunications service."²⁰ Requesting carriers are permitted to use UNEs in

¹⁸ Contrary to the assertions of BellSouth affiant Woroch, the economic conditions that have prevented entry in South Carolina are entirely within BellSouth's control. If BellSouth would permit CLECs to combine logically related network facilities and functionalities without unnecessary cost and disruption, competing facilities-based providers could enter the market, and residential customers would have a true choice among multiple providers of local and interLATA services.

¹⁹ By focusing on BellSouth's failure to provide nondiscriminatory access to UNEs, CompTel does not mean to suggest that the application meets the remainder of Section 271's requirements. For example, CompTel agrees that BellSouth's OSS systems do not meet the Act's requirements, and that BellSouth has not satisfied the pricing standard of Section 271(d). CompTel expects these issues will be fully briefed by other parties to this proceeding, and does not wish to burden the Commission with repetitive filings.

²⁰ 47 U.S.C. § 251(c)(3).

combination with self-provided facilities, or to use UNEs exclusively to provide a telecommunications service. *Interconnection Order*, ¶¶ 328-41; *Iowa Util. Bd.*, 120 F.3d at 813-15.

Further, although the Eighth Circuit's decision does not compel ILECs to combine UNEs themselves, ILECs have a duty to "allow entrants access to their networks" on a nondiscriminatory basis to enable them to combine network elements quickly and easily. *Iowa Util. Bd.*, 120 F.3d at 813.²¹ Having chosen not to provide UNEs in logical combinations, BellSouth therefore must demonstrate that it provides CLECs with nondiscriminatory access to the network so they may combine the elements themselves. However, the two alternatives BellSouth currently offers CLECs to combine UNEs are wholly insufficient. As explained in the preceding section, BellSouth forces CLECs either to accept those network elements that can be delivered to a collocation cage (and incur the substantial costs of establishing collocation arrangements) or rely on BellSouth's undefined pledge to negotiate a "glue charge" for BellSouth to recombine the elements. This position ensures that the combination of UNEs by a CLEC will cause substantial service disruptions

²¹ In light of the Eighth Circuit's decision and recent clarification order, the Commission also should reexamine its list of the minimum network elements that an ILEC must provide. The Court's decision upheld the Commission's ability to define network elements as well as its definition of a network element in a way that "encompasses a broad range of telecommunications technology and devices." *Id.* at 808-10. The Commission now should consider defining additional logically related network facilities as a single element. For example, the loop is a network element, but the Commission concluded that sub-loop elements that comprise it could also be separate elements. The same analysis can hold for several other network facilities and functionalities, such as the loop/port/switching path. By providing CLECs with the option to obtain network elements at different levels of aggregation, the Commission will promote flexibility in use of UNEs, and will further the goal of encouraging competitive entry in the residential market.

for customers choosing to change providers and will be prohibitively expensive but for the highest volume residential users. Gillan Aff. ¶¶ 8-23.

More fundamentally, the access BellSouth provides is not at parity with the access that BellSouth's own personnel have to network elements to provide service to their own customers. BellSouth already combines network elements for its own provision of service, and its personnel have access at all points in the network in order to combine them. When BellSouth uses these elements or reconfigures them, it does not incur any of the disruption or expense that CLECs incur in combining network elements.²² This disparity in treatment makes BellSouth's provisioning of UNEs inherently discriminatory. In addition, in many cases, BellSouth personnel can reconfigure the network elements it uses *solely* through automated systems. Unless and until BellSouth provides fully automated systems to separate network elements and then gives CLECs nondiscriminatory access to those systems to combine them, BellSouth's provision of access will be discriminatory.

Because BellSouth is not providing nondiscriminatory *access* to the UNEs it is making available, it is not in compliance with competitive checklist item (ii).²³ CompTel urges the Commission to require BellSouth (and the other BOCs) to provide access to the network so that CLEC personnel can combine UNEs as quickly and easily as BellSouth can combine them to create its own local exchange services. The development of fully automated systems

²² For example, BellSouth can accomplish most reconfigurations of local exchange service without the customer experiencing a loss of service during the process. The same is not true for CLEC combinations of UNEs.

²³ 47 U.S.C. § 271(c)(2)(B)(ii).

to separate network elements is an integral part of ensuring that a BOC provides nondiscriminatory access to UNEs.

IV. BELLSOUTH CANNOT PROVIDE UNBUNDLED LOCAL SWITCHING IN ACCORDANCE WITH THE CHECKLIST

Unbundled local switching is included twice in the competitive checklist. It is a "network element" which must be provided in accordance with Section 251(c) and it is a separate checklist item which is required to be offered "unbundled from transport, local loop transmission or other services."²⁴ Unbundled switching is critical to most broad-based entry strategies because it gives a carrier access to the entire switching capability provided by the LEC's switch. It "encompass[es] line-side and trunk-side facilities plus the features, functions, and capabilities of the switch." *Interconnection Order* at ¶ 412. It also includes all vertical features, Centrex functions, and all "customized routing" functions available through the switch. *Id.* Switching also enables CLECs to provide exchange access service, in addition to local exchange service. *Ameritech Michigan Order* ¶ 326.

Charges for unbundled local switching are divided into two parts, a flat-rate monthly charge and a usage-sensitive charge.²⁵ While BellSouth asserts that it can bill the monthly charge on a "system generated" (*i.e.*, automated) basis, it has recently flip-flopped on its ability to bill for the usage sensitive component. In testimony presented in July before the

²⁴ 47 U.S.C. §§ 271(c)(2)(B)(ii) and (vi).

²⁵ Milner Aff. ¶ 52.

South Carolina PSC, BellSouth admitted that it could not render usage bills to CLECs.²⁶ In that testimony, BellSouth offered to "render a manually calculated bill or retain the usage until a system generated bill is available."²⁷ BellSouth presented identical testimony in other states in its region.²⁸ In cross-examination in the Florida proceeding in early September, BellSouth witness Keith Milner repeatedly testified that BellSouth could not bill for the usage element of unbundled switching:

Q. And in that passage there [in your prefiled testimony] you testify, do you not, that BellSouth currently does not have the ability to electronically bill for usage sensitive UNEs; is that right?

A. That's correct. The term "electronically" was used yesterday. I prefer the term "mechanically" to imply something other than a manual process. But, yes, that's correct.

Q. So to just be clear, they don't have the ability to bill electronically or in a mechanized way for usage sensitive UNEs at this point in time?

A. That's correct. For I believe there are two unbundled network elements that have a usage sensitive element as part of that charge, that's correct.²⁹

²⁶ Supplemental Testimony of W. Keith Milner at 8 (Appended to BellSouth Application at Appendix C, Tab 60, p. 99 (SCPSC hearing transcript, July 8, 1997)).

²⁷ *Id.*

²⁸ *See, e.g.*, Direct Testimony of W. Keith Milner (Florida PSC Docket No. 960786-TL) at 21, Florida PSC hearing transcript at 782 (September 3, 1997) (attached as Exhibit 2 hereto).

²⁹ *Id.* at 845.

In testimony filed as recently as September 15, 1997 -- two weeks before BellSouth filed the present application -- Mr. Milner again testified that BellSouth could not provide a system generated bill for unbundled local switching usage.³⁰

However, Mr. Milner has now reversed himself on this point. In his affidavit filed with the application, Mr. Milner makes no mention of its inability to bill for usage of unbundled local switching. Instead, Mr. Milner now asserts that, "*As of August 14, 1997, BellSouth has a process in effect and the capability to mechanically produce a bill for usage charges if a CLEC purchases unbundled switching from BellSouth.*"³¹ Mr. Milner's eleventh-hour conversion simply is not credible.

Mr. Milner does not explain, for example, the "process" BellSouth allegedly has developed, nor does it assert that it has actually billed any customers for usage based upon this process. BellSouth also does not explain why, one month *after* it allegedly placed the process in effect, Mr. Milner continued to testify that BellSouth could not bill for the usage component of unbundled local switching. Finally, there is good reason to be suspicious of Mr. Milner's current claim. During the hearing on BellSouth's 271 application in Florida (the same hearing at which Mr. Milner made the testimony excerpted above), a different BellSouth witness first made the assertion now advanced by Mr. Milner. Cross-examination of the witness revealed that the assertion was based upon second hand "information" relayed

³⁰ Direct Testimony of W. Keith Milner at 20 (Mississippi PSC Case No. 97-AD-321 filed Sept. 15, 1997) (attached as Exhibit 3 hereto).

³¹ Milner Aff. at ¶ 52 (emphasis added).

to him by others at BellSouth.³² The witness also admitted that BellSouth had not actually rendered any bills using this newly-discovered "process."³³ Mr. Milner's repetition of the assertion here (which directly contradicts his own testimony before the SCPSC) should not be given any weight.

BellSouth's inability to bill for usage has two principal effects: (1) BellSouth cannot accurately bill the CLEC for the UNE and (2) the CLEC does not have the information *it* needs to offer and bill for exchange access or other usage based services using the UNE. In addition, BellSouth's inability to measure local switching usage also calls into question its ability to measure other usage-based UNEs, such as common transport. Accordingly, BellSouth has not met its burden to demonstrate that unbundled local switching or other usage based UNEs are legally or practically available.

CONCLUSION

For the foregoing reasons, BellSouth's application for authority to provide in-region interLATA services in South Carolina is premature. BellSouth has not opened its network in compliance with the Act, and in fact has done everything it can to erect an artificial and substantial entry barrier in the residential and small business markets. Its refusal to acknowledge UNEs as a competitor's own facilities and to provide access to them as if the competitor owned them pervades BellSouth's entire application, causing it to improperly

³² Hearing Transcript, cross-examination of Robert C. Scheye, Florida PSC Docket No. 960786-TL, at 1738 (Sept. 5, 1997) (attached as Exhibit 4 hereto).

³³ *Id.* at 1740.

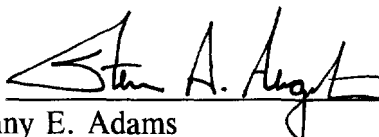
invoke Track B of Section 271 and to fail the competitive checklist. In addition, BellSouth has not yet developed the ability to track and bill usage based UNEs in a manner that allows competing carriers to use the UNE or to provide their own services using the UNE.

Accordingly, the Commission should deny the BellSouth application.

Respectfully submitted,

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